



U.S. Department of Energy DIRECTIVES

User: DoxAdmin - DOE-Directives Administrator - Comments Report

Document type: DOE-Directives

Document: DOE O 413.2C, Laboratory Directed Research and Development, Review and Comment

Overall Comments

Major comment from Dave Jensen for Bonneville Power Administration

BPA appreciates the opportunity to comment on draft DOE O 413.2C. BPA is not approved for LDRD and per our legislated authority which includes internal Research and Development, this order as written would not apply to BPA. RECOMMENDATION: Recommend that BPA be exempt from this DOE Order. Again BPA appreciates the opportunity to review and comment on this order

Response:

Accept

This Order only applied to organizations with approved LDRD programs, as BPA does not current have nor intends to start an LDRD Program, this Order does not apply to BPA

Suggested comment from Carla Whitlock for Headquarters EM

No Comment

Major comment from Steve Duarte for Headquarters GC

Included comments:

SME robin.henderson@hq.doe.gov

At the top of each page, please change "DOE O 413.2B" to "DOE O 413.2C."

Response:

Accept

Suggested comment from Steve Duarte for Headquarters GC

Included comments:

SME Eric.Mulch@hq.doe.gov

No Comment

Suggested comment from Bill Schwartz for Headquarters HG

This package represents the official, consolidated comments of **Poli A. Marmolejos, Director**

No Comment

Suggested comment from Emily Jackson for Headquarters LM

No Comment

Major comment from Emily Mishoe for Headquarters NA

Included comments:

SME slmarti@sandia.gov

Tone of the Document: The specific requirements stating how to determine the LDRD cost base and the methodology for charging LDRD costs seem to imply that LDRD is a type of tax added after actual project costs. However, LDRD is so crucial to our foundational science, technology, and engineering capabilities it should be considered as part of the actual total costs.

Response:
Reject

While LDRD is crucial to maintaining and developing scientific capabilities at the DOE national laboratories, it is collected similar to overhead. The method described in the Order is accurate and meets the intent of congressional restrictions on the collection and use of LDRD.

SME alayat1@lnl.gov

We believe that the statement regarding removing LDRD from the operating and capital budget in calculating the LDRD Program budget should be removed.

Response:
Reject

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:**

Ruth LaTulippe for Nevada Field Office

No Comment

Sheila Harris for Nevada National Security Site - Centerra Nevada

No Comment

SME barry.mellor@nnsa.doe.gov

No Comment

Delegate Shipley, Doug for Nevada Field Office

No Comment

Sandee Greene for Savannah River Field Office

Since there is no DOE Order for PDRD, if this Order could say "Laboratory's/Plant's/Site's" and mandate 4% - 6% spending limit. . . . Then this order could be used for LDRD, PDRD & SDRD.

Response:
Reject

There are too many differences between PDRD and LDRD, at this time this Order will remain applicable only to LDRD.

SME timothy.fischer@nnsa.srs.gov

No Comment

SME Carol.Elliott@nnsa.srs.gov

No Comment

SME joseph.newell@nnsa.srs.gov

No Comment

Henry Van Dyke for NA-General Counsel

No Comment

SME michael.heil@nnsa.doe.gov

No Comment

Yvonne Salaz for Los Alamos National Laboratory

No Comment

SME shekita.robinson@nnsa.doe.gov

No Comment

SME marcia.shell@nnsa.doe.gov

No Comment

SME john.w.weidner@nnsa.doe.gov

No Comment

SME Lucille.Gentry@nnsa.doe.gov

No additional comments.

Diana Tamayo for NA-80 Counterterrorism and Counterproliferation

No Comment

Ken West for NA-Acquisition and Project Management

No Comment

David Freshwater for NA-40 NNSA Emergency Operations

The Office of Emergency Operations (NA-40) has no comments on the subject directive.

Mark Roman for NA-70 Defense Nuclear Security

No Comment

Mark Roman for NA-70 Defense Nuclear Security

No Comment

Sharon O'Bryant for NNSA Production Office

No comment.

Linell Carter for Pantex - BWXT Pantex, LLC

No Comment

SME david.goett@nnsa.doe.gov

no comment

Donna Barnette for NA-30 Naval Reactors

No Comment

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

SME anthony.belvin@nuclear.energy.gov

Very clear and concise document.

Response:

Accept

SME mccoys@id.doe.gov

The re-write is appropriate in light of the congressional language on LDRD and current discussions. I am concerned that given the level of visibility the issue of LDRD charging practices has had, the new language may not be sufficient to explain the process of costing LDRD clearly. I would suggest that either 1) a glossary of terms which are not widely understood be added as an attachment to the order; 2) and/or a uniform and agreed-upon set of charging practices (or at least guiding principles for charging practices) be attached to the order, to go along with the CRD.

Response:

Accept

SME John.Jackson@inl.gov

No Comment

Major comment from Jennifer Kelley for Headquarters SC

This package represents the official, consolidated comments of **Joe McBrearty, Deputy Director for Field Operations**

The current and proposed LDRD Order correctly excludes Construction projects from the application of the LDRD rate because construction projects do not normally benefit from work being performed on LDRD, the application of the LDRD rate would significantly increase the cost of the construction project making it more difficult for the DOE programs to fund, and the additional LDRD cost would overstate the value of the capital asset. There are also cases where Major Items of Equipment projects in the \$2m to \$100m+ range fit this exact situation which by the new definition in the Order may be subject to the application of the LDRD rate. The DOE labs should be allowed to exempt these large, one-time, MIE projects from the application of the LDRD rate as long as the MIE projects are also excluded from "the operating and capital equipment budget" which constitute the basis of the 6% statutory limit.

Response:

Accept

While language in the Order only excludes line-item construction and LDRD, additional exclusions can be requested by a lab. These must have a strong business case, must follow requirements in the LDRD Order (e.g. LDRD must be charged to the same base used to calculate the allowable LDRD budget), and must be approved by the field CFO. If approved, the exclusion must be described in the lab's CAS disclosure statement.

Suggested comment from Jennifer Kelley for Headquarters SC

This package represents the official, consolidated comments of **Joe McBrearty, Deputy Director for Field Operations**

No Comment

The changes in the draft DOE O 413.2C clearly incorporate the congressional direction of the Consolidated Appropriations Act, 2014, P.L. 113-076 and the Consolidated and Further Continuing Appropriations Act, 2015, P. L. 113-235. The revisions are adequate as written.

Response:

*Accept***Suggested comment from Cecelia Kenney for Headquarters AU**

This package represents the official, consolidated comments of **Stephen A. Kirchhoff, Deputy Associate Under Secretary for Environment, Health, Safety and Security**

The original version of O 413.2B, issued in April 2006, was revised by an administrative change in January 2011. That administrative change made several minor changes to the wording in the Order. The new version of the Order (O 413.2C) reflects the wording in the 2006 version of O 413.2B, rather than the current (2011) version. Is there a reason for ignoring the administrative change and reverting back to the 2006 wording, or was this simply an oversight?

Response:*Accept*

Changes made in Admin Chg 2 will be incorporated in to the final version.

Suggested comment from Loretta Robinson for Headquarters HC

This package represents the official, consolidated comments of **N/A - Comment package automatically submitted.**
No Comment

Suggested comment from John Wall for Headquarters CF

This package represents the official, consolidated comments of **john.wall@hq.doe.gov**

Included comments:**SME dana.thibeau@hq.doe.gov**

No Comment

Suggested comment from Sharon Edge-Harley for Headquarters EA (Enterprise Assessment)

This package represents the official, consolidated comments of **William A. Eckroade, Deputy Director, Office of Enterprise Assessments**

No Comment

1-3. OBJECTIVE; CANCELLATION; APPLICABILITY**Major comment from Emily Mishoe for Headquarters NA****Included comments:****SME Lucille.Gentry@nnsa.doe.gov**

The second bullet should state, "enhance the laboratories' ability to address current and future DOE/NNSA missions"

Response:*Accept***Major comment from Steve Duarte for Headquarters GC****Included comments:****SME robin.henderson@hq.doe.gov**

Please change the second paragraph in a. to read as follows:

"The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their

responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under

section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary."

Response:*Accept***Major comment from Steve Duarte for Headquarters GC**

Included comments:**SME robin.henderson@hq.doe.gov**

Please change the heading to c. to "EQUIVALENCIES/EXEMPTIONS." and add the following:

"Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511, and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate."

Please capitalize "cognizant" in "cognizant Secretarial Officer."

Response:*Reject*

Capitalized C in cognizant.

The equivalency is not necessary since the Deputy Administrator for Naval Reactors is not assigned any requirements or responsibilities within this Order. It only applies to CSOs, LDRD program managers, and laboratories with LDRD programs.

Suggested comment from Steve Duarte for Headquarters GC**Included comments:****SME robert.waxman@hq.doe.gov**

In section # 1, have never seen the term "forefront science." It has the ring of commercial advertising. Suggest changing it to a term that is more traditional and less a creature of commercial advertising, such as forefront areas of science and technology.

4. REQUIREMENTS**Suggested comment from PK Niyogi for Headquarters NE****Included comments:****SME anthony.belvin@nuclear.energy.gov**

4a states that LDRD projects will be "relatively small". Is this assertion in terms of the project's cost and scope? Perhaps this sentence should be rewritten to say: "Normally, LDRD projects will be relatively small in terms of cost and scope"

Response:*Reject***Major comment from Steve Duarte for Headquarters GC****Included comments:****SME robin.henderson@hq.doe.gov**

Please delete the parentheses around "CSO." Please change "will" to "must."

Response:*Accept***Suggested comment from Tia Alexander for Headquarters EE****Included comments:****SME scott.hine@ee.doe.gov**

Recommend adding "(i.e., Work For Others)" after "includes non-DOE funded work"

Response:*Reject*

There are too many forms of non-DOE work to list without giving the appearance of excluding certain types.

Major comment from Emily Mishoe for Headquarters NA

Included comments:**SME slmarti@sandia.gov**

Major Comment: Delete "and LDRD" from the end of this requirement. LDRD is an integral element of the Laboratories' foundation and is crucial to strengthening the science, technology, and engineering capabilities required to meet current and future DOE/NNSA mission needs. Thus, the cost of LDRD should not be subtracted from the total cost.

Suggested Revision: State that the maximum funding must not exceed the amount set by Congress or the Secretary of Energy, rather than specify 6 percent, so that a future change in the rate does not require a change in the order.

Suggested Wording: *The maximum funding level established for LDRD must not exceed the limit set by Congress or the Secretary of Energy. For the purposes of this policy, no more than the statutory maximum may be applied to the Laboratory's operating and capital equipment budget, including non-DOE funded work but excluding direct-funded construction activities.*

Response:*Reject*

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

SME alayat1@llnl.gov

The proposed language in this section of the Order is overly prescriptive and is restrictive in two ways:

- It sets the maximum LDRD rate at 6% and limits LDRD collection to no higher than the 6% cap to program, project and activity level
- Excludes LDRD program costs from the calculation of the size of the LDRD Program.

If implemented, this proposed language sets the size of the LDRD Program to a lower rate than has been authorized by Congress, and could be damaging to the Programs at LLNL and other NNSA Laboratories. As such, we do not concur with these modifications and suggest that the revised LDRD Order remove the proposed restrictive language.

Over the years Congress has modified the LDRD rate several times; we believe that it is more appropriate to have the Order states that the "maximum rate should be consistent with what is authorized by Congress." This would eliminate the need for revisiting the Order if and when Congress changes the LDRD rate.

More concerning is the proposed language to exclude LDRD from the operating and capital budget in calculating the LDRD base. In essence this will result in a program that falls below the Congressionally mandated 6% ceiling. This language would limit the LDRD rate to a maximum of 5.64% of the site's Operating and Capital budget. The previous guidance to size an LDRD program based on a Laboratory's Operating and Capital budget excluding Construction, as stated in Congressional authorization, is well understood and has been in place for many years – there is no need for further restrictive guidance. Additionally, one questions how to implement this circulatory policy. You need to know the size of the LDRD to subtract it from the total budget.

Response:*Reject*

Will delete "of 6%" and instead point to the congressional language setting the maximum.

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:****SME Lucille.Gentry@nnsa.doe.gov**

c. The maximum funding level established for LDRD must not exceed the level set by Congress or the Secretary of Energy. For purposes of this policy, no more than this maximum statutory rate may be applied to the operating and capital equipment budget for the year. The operating and capital equipment budget includes non-DOE funded work but excludes direct-funded construction activities.

Response:

Accept with Modifications

Proposed language: c. The maximum funding level established for LDRD must not exceed the congressionally mandated limit of a laboratory's total operating and capital equipment budget for the year. For the purposes of this policy, the operating and capital equipment budget, includes non DOE funded work but excludes line-item construction activities and LDRD.

SME aaron.perea@nnsa.doe.gov

Recommend deleting the last two words "and LDRD"

This does not allow for the maximum rate of 6% to be collected on all funds into the laboratory. LDRD is an allowable cost similar to G&A and excluding it like construction treats it like additional outside funds into the Laboratories vs an allowable cost that is collected and then applied to LDRD projects.

Response:

Reject

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

SME kevin.goetz@nnsa.doe.gov

a) MB60: In a couple of places, when specifying the allowable LDRD "base," the document notes "the operating and capital equipment budget... but excludes direct-funded construction activities." What exactly does "direct-funded construction activities" include? Is the intent to remove all construction related work from the LDRD base or is it meant to exclude line item construction only (since it differs from operating funding)? Please note that indirect minor construction is also funded by operating. Is the term "direct" here being used in a generic sense, or is indirect minor construction still part of the LDRD base? If so, why the differentiation? This should be clarified.

b) MB60: An additional funding point related to the first above is that the language states that LDRD itself is excluded from the base. The language notes the base is "the operating and capital equipment budget... but excludes LDRD." We are not sure if the language is trying to state that LDRD should not be burdened on LDRD (that should be clear from cost accounting basics) or if it is trying to state that the LDRD program in total must be excluded from the total available funding to calculate the program size. This is confusing, can be read with a circular inference, and should be clarified.

Response:

Accept

Proposed language: c. The maximum funding level established for LDRD must not exceed the congressionally mandated limit of a laboratory's total operating and capital equipment budget for the year. For the purposes of this policy, the operating and capital equipment budget, includes non DOE funded work but excludes line-item construction activities and LDRD.

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4c. We suggest allowing an LDRD exemption for MIE projects as follows:

For the purpose of this policy, the operating and capital equipment budget, includes non-DOE funded work but excludes direct-funded construction activities, Major Items of Equipment (MIE), and LDRD.

Response:

Accept with Modifications

While language in the Order only excludes line-item construction and LDRD, additional exclusions can be requested by a

lab. These must have a strong business case, must follow requirements in the LDRD Order (e.g. LDRD must be charged to the same base used to calculate the allowable LDRD budget), and must be approved by the field CFO. If approved, the exclusion must be described in the lab's CAS disclosure statement.

Paragraph 4c. With respect to the following statement in both the draft Order and its Contractor Requirements Documents (CRD), it is not clear whether GPP and AIP funding is included in "direct-funded construction activities", as stated in the last sentence of this paragraph. Our understanding is that GPP/AIP funding is "operating" and is thus not excluded, but it would be clearer if the exclusion were termed "line item construction" if that is what is meant.

Response:

Accept with Modifications

Changed direct funded to line-item construction.

Major comment from John Wall for Headquarters CF

If LDRD funding is subject to carryover from year to year, the LDRD costs in any one fiscal year could exceed 6% of the lab budget, even if they did not exceed the maximum allowed expenditures for LDRD over a multi-year period. The costs over six percent would be reported in the annual LDRD report and would likely raise questions/concerns.

Response:

Accept

Consistent with other overhead charges, LDRD cannot be carried over from year to year.

Major comment from Emily Mishoe for Headquarters NA

Included comments:

SME slmarti@sandia.gov

Major Comment: Request that the second sentence be deleted, so that this section reads: *No individual program, project, or activity at the laboratory may be charged more than the statutory maximum authorized for LDRD.*

Response:

Reject

This sentence is needed to ensure congressional intent is met, a consistent LDRD rate applied to all program activities with a nominal rate not to exceed 6%.

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME kevin.goetz@nnsa.doe.gov

a) MB60: What exactly is the definition for "individual program, project, or activity?" This needs to be clarified as well. In the past, various labs have suggested a very different approach which defined a program, project, or activity differently. For consistency this should be clearly defined.

b) MB60: There has been recent communication that the nominal (applied) rate used by each lab be no greater than 6% starting in FY 16. Using the FY 16 6% requirement, by our interpretation, nowhere is this required in the document. It simply states "DOE laboratories shall allocate LDRD costs by applying a uniform rate to the same modified total cost base that is used to calculate the LDRD budget for the year." This is a somewhat confusing statement. Is the intent to ensure that the effective rate will be the same across all programs not to exceed 6% or is it to require the nominal rate to equal 6%. The guidance in this area needs to be more explicit to ensure consistency.

Response:

Accept

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that

is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from PK Niyogi for Headquarters NE

Included comments:

SME mccoys@id.doe.gov

Am assuming given the work of the Lab CFO's that the will be details or an agreed to process for this. it may not solve our problem unless the process is standardized

Response:

Accept

Worked with the NLCFO working group to try to minimize the impact of congressional language related to LDRD

Major comment from Jennifer Kelley for Headquarters SC

Paragraph 4d. Recommend removing/changing the phrases "to ensure consistent", "uniform" and "modified total cost" for the last sentence as follows:

To ensure compliance with the 6 percent limit, DOE laboratories shall allocate LDRD costs by applying the LDRD rate to the same base that is used to calculate the LDRD budget for the year.

Response:

Accept

Proposed language: d. No individual program, project, or activity at the laboratory may be charged more than the statutory maximum limit authorized for LDRD. To ensure compliance with the congressionally mandated limit, DOE laboratories shall allocate LDRD costs by applying a uniform rate to the same base that is used to calculate the LDRD budget for the year (see 4.c. above).

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4d. Suggest adding the following language to paragraph 4d: "Any laboratory operating or capital equipment cost excluded from the LDRD allocation base must be approved by the Field Chief Financial Officer, and must also be excluded from the amounts used to calculate compliance with the congressionally mandated limit of 6 percent (see paragraph 4c above)."

There are valid reasons for excluding certain operating and capital equipment costs from LDRD allocation. For example, one ORO contractor has a large Major Item of Equipment (MIE) project which has already reached CD-2 and, therefore, has an approved baseline. DOE previously approved excluding this MIE from LDRD allocation. Requiring LDRD allocation to this project at this stage would have a significant adverse impact on the project budget. Another example is "other project costs (OPC)" related to line item construction projects. OPC is included in project data sheets and considered part of the total cost the project. Also, cost for off-site activities such as Intergovernmental Personnel Act details to DOE or other Federal agencies does not appear to warrant LDRD allocation.

Response:

Accept with Modifications

While language in the Order only excludes line-item construction and LDRD, additional exclusions can be requested by a lab. These must have a strong business case, must follow requirements in the LDRD Order (e.g. LDRD must be charged to the same base used to calculate the allowable LDRD budget), and must be approved by the field CFO. If approved, the exclusion must be described in the lab's CAS disclosure statement.

Paragraph 4d. Recommend the term "modified total cost base" be deleted. Replace with language such as "....applying a uniform rate to the same base that is used to calculate the LDRD budget for the year (see comment on paragraph 4c above).

The term "modified total cost base" may be confusing to contractors. We have told our contractors that a modified total cost base is generally non-compliant with Cost Accounting Standards because the contractors have modified the base to use a cap on subcontracts. This dates back to some old DOE CFO guidance, and some contractors still use the term. Also, the term closely resembles the term "modified total direct cost base" used by educational institutions and State and local governments, which also may be confusing.

Response:

Accept

Paragraph 4d. Recommend following sentence from current Order be added back in at the end of this paragraph, "The Lab's

system for accrual of these funds, to a reasonable extent, must provide for equitable pro rata contributions by all sources of operating and capital equipment funding."

The sentence should be added because Site Office Manager must review and certify annually whether the laboratory's method for accounting LDRD funds is consistent with this paragraph and 4c, above, as well.

Response:

Reject

Since a consistent rate is applied to the same base, this is already covered by the Order.

Suggested comment from Steve Duarte for Headquarters GC**Included comments:**

SME robin.henderson@hq.doe.gov

Please change the beginning of the first sentence to read as follows: "LDRD expenditures are considered ~~an~~ allowable cost~~s~~."

Response:

Accept

Major comment from PK Niyogi for Headquarters NE**Included comments:**

SME mccoys@id.doe.gov

Although I understand the intent and purpose of this statement, it is not clear and may not be understood by those outside the Lab's CFO organizations. Can "final cost objective" be defined somewhere?

Response:

Accept

Will add a definition in the Order, to be provided by CF.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4e. Suggest modifying the last sentence requiring LDRD to be treated as a final cost objective to state the following:

LDRD constitutes a final cost objective and must be charged in the same manner as costs are charged to non-LDRD final cost objectives in accordance with the site's normal cost accounting practices. However, the LDRD costs shall be excluded from the LDRD base.

Response:

Reject

This is already covered by 4.c. and 4.d.

Suggested comment from John Wall for Headquarters CF**Included comments:**

SME callis.carleton@hq.doe.gov

Recommend the following clarifying language:

LDRD activities constitute a final cost objective; direct and indirect costs must be charged to LDRD activities in the same manner as costs are charged to non-LDRD final cost objectives in accordance with the site's normal cost accounting practices.

Response:

Reject

Language was simplified in final review version. Additional words may add confusion. Goal is to ensure LDRD projects are handled the same as non-LDRD projects.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 4g. It seems that paragraph 4g of the order should also be in the Contractor Requirements Document since Cost Accounting Standards Disclosure Statements are contractor submissions.

Response:*Accept***Suggested comment from John Wall for Headquarters CF**

The provision is consistent with the CAS requirement to annually review and revise pre-established rates for indirect costs incurred during the accounting period and dispose of any material variances (CAS 418-50(g)).

Response:*Accept*

SC also emphasized that this was not a change in policy—they were amending the order to reflect an existing requirement. They also emphasized that the order has always required re-approval of the LDRD projects on an annual basis.

Major comment from Steve Duarte for Headquarters GC**Included comments:**

SME robin.henderson@hq.doe.gov

In the beginning of i., please change "will not" to "must not."

In (3), please clarify what "Title I" is referring to.

Response:*Accept***Major comment from Steve Duarte for Headquarters GC****Included comments:**

SME robin.henderson@hq.doe.gov

Please change "will" to "must."

Response:*Accept***5. RESPONSIBILITIES****Suggested comment from Tia Alexander for Headquarters EE****Included comments:**

SME scott.hine@ee.doe.gov

Under b. (2), the review, approval and non-approval process should be articulated. it is my sense that site offices approve the LDRD plan with minimal review.

Response:*Reject*

Each program sets policies and procedures for reviewing the plan. Some programs have delegated this authority to the site/field office.

Suggested comment from Steve Duarte for Headquarters GC**Included comments:**

SME robert.waxman@hq.doe.gov

Paragraph b.(2) refers to paragraph 4b. There is no 4b and only a paragraph 4.

Response:

Accept

Changed to state paragraph 4.b.

6-7. REFERENCES; CONTACT

ATTACHMENT 1. CONTRACTOR REQUIREMENTS DOCUMENT

Suggested comment from Emily Mishoe for Headquarters NA

Included comments:

SME Lucille.Gentry@nnsa.doe.gov

c. The maximum funding level established for LDRD must not exceed the level set by Congress or the Secretary of Energy. For the purposes of this policy, the operating and capital equipment budget, includes non-DOE funded but excludes direct-funded construction activities.

Response:

Accept with Modifications

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Will delete "of 6%" and instead point to the congressional language setting the maximum.

Changed direct-funded to line-item construction

Major comment from Steve Duarte for Headquarters GC

Included comments:

SME robin.henderson@hq.doe.gov

In the beginning of b., please change "will" to "must."

Response:

Accept

Suggested comment from Steve Duarte for Headquarters GC

Included comments:

SME robin.henderson@hq.doe.gov

In c., please delete the comma after "budget" and insert a comma after "funded."

Response:

Accept

Major comment from Emily Mishoe for Headquarters NA

Included comments:

SME slmarti@sandia.gov

Major Comment: Delete "and LDRD" from the end of requirement 1.c. LDRD is an integral element of the Laboratories' foundation and is crucial to strengthening the science, technology, and engineering capabilities required to meet current and future DOE/NNSA mission needs. Thus, the cost of LDRD should not be subtracted from the total cost.

Suggested Revision: State that the maximum funding must not exceed the amount set by Congress or the Secretary of Energy, rather than specify 6 percent, so that a future change in the rate does not require a change in the order.

Suggested Wording: *The maximum funding level established for LDRD must not exceed the limit set by Congress or the Secretary of Energy. For the purposes of this policy, no more than the statutory maximum may be applied to the Laboratory's operating and capital equipment budget, including non-DOE funded **work** but excluding direct-funded construction activities.*

Response:*Reject*

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from Emily Mishoe for Headquarters NA**Included comments:****SME aaron.perea@nnsa.doe.gov**

Recommend deleting the last two words "and LDRD"

This does not allow for the maximum rate of 6% to be collected on all funds into the laboratory. LDRD is an allowable cost similar to G&A and excluding it like construction treats it like additional outside funds into the Laboratories vs an allowable cost that is collected and then applied to LDRD projects.

Response:*Reject*

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Major comment from Jennifer Kelley for Headquarters SC

Paragraph 1c. The proposed language in this paragraph currently only excludes Construction projects and LDRD from the base in determining LDRD funding and for allocating LDRD costs (paragraph 1d(2)). This language will result in difficulties for DOE programs to fund MIE projects, particularly for projects that have already been approved by DOE Program Offices. DOE Laboratories should be allowed to exclude MIE projects from the LDRD base as these large projects do not normally benefit from the work being performed as part of the LDRD program, similar to Construction projects.

Recommend revising the wording as follows: (last sentence) For the purposes of this policy, the operating and capital equipment budget, includes non-DOE funded, but excludes direct-funded construction activities, Major Items of Equipment (MIE), and LDRD."

Response:*Accept with Modifications*

While language in the Order only excludes line-item construction and LDRD, additional exclusions can be requested by a lab. These must have a strong business case, must follow requirements in the LDRD Order (e.g. LDRD must be charged to the same base used to calculate the allowable LDRD budget), and must be approved by the field CFO. If approved, the exclusion must be described in the lab's CAS disclosure statement.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 1c. Editorial comment: The word "work" is missing after "...non-DOE funded..." in the second sentence, and as shown for this same requirement in Paragraph 4c in the body of the Order.

Response:*Accept***Major comment from Emily Mishoe for Headquarters NA****Included comments:****SME Lucille.Gentry@nnsa.doe.gov**

Remove the last sentence on e.

Response:*Reject*

This line is needed to ensure LDRD is treated in the same manner as other non-LDRD final cost objectives. Removed some detail to make the sentence more clear.

SME slmarti@sandia.gov

Major Comment: Delete the specific methodology, so that the section reads: *Establish a cost accounting system that ensures that no individual program, project, or activity is charged more than the statutory maximum authorized for LDRD. The methodology used for charging LDRD costs shall be described in the Cost Accounting Standards disclosure statement.*

Response:

Reject

The only way to implement congressional intent (a charge rate not to exceed 6% and a consistent effective rate at the program, project, and activity level) is to institute a consistent methodology for accruing LDRD funds.

SME alayat1@llnl.gov

The proposed language in this section of the Order is overly prescriptive and is restrictive in two ways:

- It sets the maximum LDRD rate at 6% and limits LDRD collection to no higher than the 6% cap to program, project and activity level
- Excludes LDRD program costs from the calculation of the size of the LDRD Program.

If implemented, this proposed language sets the size of the LDRD Program to a lower rate than has been authorized by Congress, and could be damaging to the Programs at LLNL and other NNSA Laboratories. As such, we do not concur with these modifications and suggest that the revised LDRD Order remove the proposed restrictive language.

Over the years Congress has modified the LDRD rate several times; we believe that it is more appropriate to have the Order states that the "maximum rate should be consistent with what is authorized by Congress." This would eliminate the need for revisiting the Order if and when Congress changes the LDRD rate.

More concerning is the proposed language to exclude LDRD from the operating and capital budget in calculating the LDRD base. In essence this will result in a program that falls below the Congressionally mandated 6% ceiling. This language would limit the LDRD rate to a maximum of 5.64% of the site's Operating and Capital budget. The previous guidance to size an LDRD program based on a Laboratory's Operating and Capital budget excluding Construction, as stated in Congressional authorization, is well understood and has been in place for many years – there is no need for further restrictive guidance. Additionally, one questions how to implement this circulatory policy. You need to know the size of the LDRD to subtract it from the total budget.

Response:

Accept with Modifications

Will delete "of 6%" and instead point to the congressional language setting the maximum.

LDRD must be excluded from the base used to calculate the maximum LDRD level since LDRD funds cannot be collected from an LDRD project. To prevent a charge rate greater than the congressionally mandated limit (i.e. 6%), anything that is exempt from the LDRD charge cannot be included in the base used for determining the maximum allowable LDRD budget.

Suggested comment from Jennifer Kelley for Headquarters SC

Paragraph 1d. Suggest adding the following language: "Any laboratory operating or capital equipment cost excluded from the LDRD allocation base must be approved by the Field Chief Financial Officer, and must also be excluded from the amounts used to calculate compliance with the congressionally mandated limit of 6 percent."

There are valid reasons for excluding certain operating and capital equipment costs from LDRD allocation. For example, one ORO contractor has a large Major Item of Equipment (MIE) project which has already reached CD-2 and, therefore, has an approved baseline. DOE previously approved excluding this MIE from LDRD allocation. Requiring LDRD allocation to this project at this stage would have a significant adverse impact on the project budget. Another example is "other project costs (OPC)" related to line item construction projects. OPC is included in project data sheets and considered part of the total cost the project. Also, cost for off-site activities such as Intergovernmental Personnel Act details to DOE or other Federal agencies does not appear to warrant LDRD allocation.

Response:

Accept with Modifications

While language in the Order only excludes line-item construction and LDRD, additional exclusions can be requested by a lab. These must have a strong business case, must follow requirements in the LDRD Order (e.g. LDRD must be charged to the same base used to calculate the allowable LDRD budget), and must be approved by the field CFO. If approved, the exclusion must be described in the lab's CAS disclosure statement.

Paragraph 1d(1) and (2). Recommend that the term "modified total cost base" in paragraphs 1d(1), 1d(2) be deleted.

Subparagraphs (1) and (2) can be combined using language such as "DOE laboratories shall allocate LDRD by applying a uniform rate to the same base that is used to calculate the LDRD budget for the year (see comment on 1c above).

The term "modified total cost base" may be confusing to contractors. We have told our contractors that a modified total cost base is generally non-compliant with Cost Accounting Standards because the contractors have modified the base to use a cap on subcontracts. This dates back to some old DOE CFO guidance, and some contractors still use the term. Also, the term closely resembles the term "modified total direct cost base" used by educational institutions and State and local governments, which also may be confusing.

Response:*Accept***Major comment from Steve Duarte for Headquarters GC****Included comments:****SME robin.henderson@hq.doe.gov**

Please change the beginning of e. to read as follows: " LDRD expenditures are considered ~~an~~ allowable costs."

Response:*Accept***Suggested comment from John Wall for Headquarters CF****Included comments:****SME callis.carleton@hq.doe.gov**

Recommend clarifying language.

LDRD activities constitute a final cost objective; direct and indirect costs must be charged to LDRD activities in the same manner as costs are charged to non-LDRD final cost objectives in accordance with the site's normal cost accounting practices

Response:*Accept with Modifications*

The purpose is to make sure LDRD is charged on all parts of the project with the exception of LDRD.

Major comment from Steve Duarte for Headquarters GC**Included comments:****SME robin.henderson@hq.doe.gov**

At the beginning of g., please change "will not" to "must not."

In (3), please clarify what "Title I" is referring to.

Response:*Accept***Major comment from Steve Duarte for Headquarters GC****Included comments:****SME robin.henderson@hq.doe.gov**

At the beginning of h., please change "will" to "must."

Response:*Accept***FOOTNOTE**

